

REMARKS

Applicant appreciates the Examiner's thorough examination of this application.

Claims 1-47 are pending in this application, all of which stand rejected. In this response, Applicant amends claims 36, 38 and 41 to more particularly point out and distinctly claim Applicant's invention. Support for the claim amendments is provided in the specification, particularly, page 6, lines 1-5. No new matter is added. Applicant respectfully traverses the Examiner's rejections. Further examination and review in view of the amendments and remarks below are respectfully requested.

In the Office Action mailed on January 30, 2004 (Paper No. 10), the Examiner rejected claims 1-26 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 5,960,411 to Hartman et al. ("Hartman") in view of U.S. Patent No. 6,026,3762 to Kenney ("Kenney"); rejected claims 1-26 under 35 U.S.C. § 103(a) as being unpatentable over Kenney in view of *Amazon.com, Inc. v. BarnesAndNoble.com, Inc.*, 239 F.3d 1343, 57 USPQ 1747 (Fed. cir. 2001) ("Amazon"); rejected claims 36-38 and 41-43 under 35 U.S.C. § 103(a) as being unpatentable over Kenney; rejected claims 27-35 and 45-47 under 35 U.S.C. § 103(a) as being unpatentable over Kenney in view of U.S. Patent No. 6,272,532 to Feinleib ("Feinleib"); and rejected claims 39 and 40 under 35 U.S.C. § 103(a) as being unpatentable over Kenney in view of U.S. Patent No. 6,249,774 to Roden et al. ("Roden").

Applicants' techniques are directed to automatically initiating the replenishment of items such as physical products. These techniques establish a target date on which the item presently being used by a customer should probably be replenished. In some cases, these techniques determine the target date based upon the identity of the item. In some cases, the techniques autonomously send a replenishment recommendation to the customer through such communication channels as electronic mail, instant messaging, or voicemail. In some cases, the techniques provide a replenishment recommendation containing a control that the customer may, with a single action, use to request replenishment of the item. In some cases, the techniques, when they

determine that the item should be replenished, automatically cause the item to be replenished, without requiring any action of the user.

I. Double Patenting Rejection

Claims 1-26 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Hartman and Kenney. Applicant respectfully traverses the Examiner's rejection. Hartman is assigned to Amazon.com, Inc., of Seattle, Washington, as is the present application, and is directed to ordering an item from a client system by performing a single action on the client system. Kenney is directed to a much more limited approach to enabling the reordering of items *while the shopper is shopping at a shopping website*. In Kenney, the shopper first creates a list of items that may later be reordered, called a reorder list. (col. 11, lines 21-24). When the shopper is later shopping, the shopper can display the items in the reorder list, and select items from the reorder list to be added to a current list. (col. 11, lines 13-15).

Claim 1 recites, in part, "before the second date, providing to the consumer an indication that the product should be replenished, *the indication including a control usable by the consumer to request replenishment of the product by performing a single action.*" Claims 2 and 15 each recite, in part, "on the target date, providing to the consumer an indication that the first item should be replenished, *the indication including a user interface control usable by the consumer to request replenishment of the first item.*"

The Examiner admits that, "Hartman does not teach the steps of automatically initiating the replenishment of a consumable product," but that Kenney teaches a method for automatically initiating the replenishment of a consumable product. In response to Applicant's prior submission made in its November 7, 2003, Amendment that the Examiner had failed to identify how Kenney either discloses or suggests providing a replenishment indication including such a user interface control as part of a replenishment indication and how Applicant can find in Kenney no such disclosure or suggestion, the Examiner maintains "that the local computer (20a, ..., 20n) constitutes a user interface control usable by the consumer to request replenishment of the first item."

Applicant respectfully disagrees with the Examiner and submits that the Examiner has failed to properly understand Applicant's feature of the user interface control being included in the indication that the product should be replenished. For example, in Applicant's invention, the indication may be in the form of an email message (page 6, lines 3-5). Included in this email message indication is the user interface control that may be used to request replenishment of the product (page 6, lines 16-19). To the contrary, if one were to follow the Examiner's indication that the local computer constitutes a user interface control, the email message would have to include the local computer. This is not possible.

Accordingly, Applicant respectfully requests reconsideration and allowance of claims 1, 2 and 15. Furthermore, claims 3-14 and 16-26 depend from claims 2 and 15, respectively, and are therefore allowable on the same basis as claims 2 and 15.

## II. Rejections under 35 U.S.C. § 103

Claims 1-47 stand rejected over Kenney, either alone or in combination with either Amazon, Feinleib or Roden. Applicant respectfully traverses the Examiner's rejection.

With reference to claims 1-26, the Examiner rejected these claims over Kenney and Amazon. For at least the reasons submitted above in response to the double patenting rejection, Applicant respectfully requests reconsideration and allowance of claims 1-26.

With reference to claims 27-35 and 45-47, the Examiner again rejected these claims over Kenney and Feinleib by presenting the same reasons the Examiner presented in the Office Action dated June 10, 2002 (paper No. 6). In response to Applicant's request in its November 7, 2003, Amendment that the Examiner explain with the required specificity where a suggestion or motivation to combine the references can be found in the prior art, the Examiner indicated that "Feinleib discloses a reminder system that notifies users of upcoming events" and that "this is sufficient motivation to employ the system of Feinleib to notify users of the need to reorder items."

Applicant respectfully disagrees with the Examiner. In addition to maintaining Applicant's reasons previously presented in its November 7, 2003, Amendment, Applicant submits that there is no motivation to combine Kenney and Feinleib. Kenney merely describes permitting the user to select one or more items to store in a reorder list and displaying the reorder list of items during an interactive virtual shopping session (i.e., when the user visits the virtual store). Therefore, for each item, the reorder date can be a future date, the current date, or a past date. Thus, it is illogical to use the reorder date of Kenney to trigger a reminder. Because the reorder date can be any date and because Kenney requires the user to be visiting the virtual store to display the items on the reorder list, not only is there no motivation to combine Kenney and Feinleib, Kenney appears to teach away from combining the references.

Accordingly, Applicant respectfully requests reconsideration and allowance of claims 27-35 and 45-47.

With reference to claims 36-38, the Examiner rejected these claims over Kenney. While Applicant regards the pending claims 36 and 38 to be patentable over Kenney for at least the reasons previously presented in its November 7, 2003, Amendment, Applicant hereby amends claims 36 and 38 to explicitly recite, in part, "on a current date, for each entry indicating the current date as its target date, a unilateral communication can be transmitted to the consumer identified by the entry proposing the replenishment of the item identified by the entry." Applicant submits that claims 36 and 38, as amended, are unarguably patentable over Kenney.

Accordingly, Applicant respectfully requests reconsideration and allowance of claims 36 and 38. Furthermore, claim 37 depends from claim 36 and is therefore allowable on the same basis as claim 36.

With reference to claims 41-43, the Examiner rejected these claims over Kenney. While Applicant regards the pending claim 41 to be patentable over Kenney for at least the reasons previously presented in its November 7, 2003, Amendment, Applicant hereby amends claim 41 to recite, in part, "when the event is raised, unilaterally suggesting replenishment of the item to the purchasing entity." Applicant submits that claim 41, as amended, is unarguably patentable over Kenney.

Accordingly, Applicant respectfully requests reconsideration and allowance of claim 41. Furthermore, claims 42 and 43 depend from claim 41 and are therefore allowable on the same basis as claim 41.

With reference to claims 39 and 40, the Examiner rejected the claims over Kenney and Roden. Roden describes a method by which a distributor owns, manages and automatically replenishes the inventory of a business that is a customer of the distributor. In particular, the distributor purchases from the business the inventory of designated items and then invoices the business on a unit of use basis for reimbursement, but only at the time when the designated items are sold to consumers by the business.

Claim 39 recites, in part, "without intervention by the customer, placing an order on the customer's behalf for replenishment of the item within a predetermined tolerance of the target replenishment date." In making the rejection, the Examiner admitted that Kenney fails to teach that the product is automatically reordered, but that Roden discloses a method for automatically reordering needed inventory.

Applicant respectfully disagrees with the Examiner. In the method disclosed by Roden, "[d]epending upon a transaction report electronically transmitted to the distributor, the inventory of the designated items dispensed to consumers by the business is automatically replenished by the distributor." (see Abstract). The automatic replenishment in Roden is NOT without intervention by the business and, thus, Roden does not disclose the feature of placing an order on the customer's behalf without intervention by the customer. Therefore, the Examiner has failed to identify how the combination of Kenney and Roden either discloses or suggests placing an order on the customer's behalf without intervention by the customer. Likewise, Applicant can find in Kenney or Roden no such disclosure or suggestion.

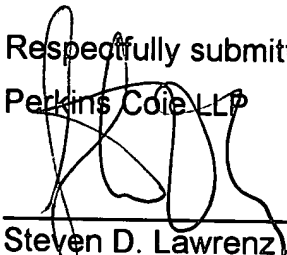
Accordingly, Applicant respectfully requests reconsideration and allowance of claim 39. Furthermore, claim 40 depends from claim 39 and is therefore allowable on the same basis as claim 39.

III. Conclusion

In view of the foregoing, Applicant respectfully submits that claims 1-47 are allowable and asks that this application be passed to allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-8000.

Respectfully submitted,  
Perkins Coie LLP

Date: July 30, 2004

  
\_\_\_\_\_  
Steven D. Lawrenz  
Registration No. 37,376

Correspondence Address:

Customer No. 25096  
Perkins Coie LLP  
P.O. Box 1247  
Seattle, Washington 98111-1247  
(206) 359-8000